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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID KONETSKI and SHANNON CHRISTOPHER BOESCH

Appeal 2009-007124
Application 09/771,095
Technology Center 2400

Before JAY P. LUCAS, JOHN A. JEFFERY, and
CAROLYN D. THOMAS, *Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 27, 29-46, and 48-52. Claims 1-26, 28, and 47 have been canceled. App. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants invented a computer system and method for using computer resources with a thin media client. *See generally* Spec. 1. Claim 27 is illustrative:

> 27. A personal computer comprising a processor and a memory for:
>
> retrieving digital media content from a content provider, wherein the retrieving is performed by a processor of a personal computer;
>
> performing a digital rights management function associated with an authorized user resulting in authorized digital media content, wherein the digital rights management function is performed by the processor of the personal computer;
>
> storing the authorized digital media content in a memory of the personal computer; and
>
> providing the authorized digital media content via a user interface to a thin media client without performing a digital rights management function on the thin media client, wherein the providing is performed by the personal computer, and wherein the thin media client comprises an input/output (IO) device coupled to the personal computer.

The Examiner relies on the following as evidence of unpatentability:

Platt	US 6,987,221 B2	January 17, 2006 (filed May 30, 2002)
Raley	US 7,073,199 B1	July 4, 2006 (filed Aug. 28, 2000)

The Examiner rejected claims 27, 29-46, and 48-52 under 35 U.S.C. § 103(a) as unpatentable over Raley and Platt. Ans. 3-7.[2]

[2] Throughout this opinion, we refer to (1) the Appeal Brief filed September 4, 2008; (2) the Examiner's Answer mailed November 26, 2008; and (3) the Reply Brief filed January 20, 2009.

Based on the record before us, the issue before us is as follows:

ISSUE

Does Platt qualify as prior art under 35 U.S.C. § 102?

FINDINGS OF FACT

(1) The present application (U.S. Application No. 09/771,095) has an effective filing date of January 26, 2001.

(2) The Platt reference (U.S. Patent No. 6,987,221 B1) has a publication date of January 17, 2006 and a filing date of May 30, 2002. *See* Platt (kind codes (45) and (22) on front page).

(3) Platt does not claim priority to a non-provisional application under 35 U.S.C. § 120 or a provisional application under 35 U.S.C. § 119.

PRINCIPLES OF LAW

Section 102 of the Patent Act states:

A person shall be entitled to a patent unless —

> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
>
> . . . .

> (e) the invention was described in — . . . (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent . . . .

ANALYSIS

The pivotal issue in this case is whether Platt qualifies as prior art. Integral to this analysis is a determination of Platt's critical reference date. Sections 102(c), (d), (f), and (g) of the Patent Act are inapplicable to the Platt reference. We therefore examine Platt in the context of §§ 102(a), (b), and (e).

The Platt reference (U.S. Patent No. 6,987,221) has a publication date of January 17, 2006. FF 2. This publication date is after the present application's filing date (January 26, 2001). FF 1. Platt thus does not qualify as prior art under § 102(b), which requires the Platt reference to be published more than one year prior to the present application's filing date. *See* 35 U.S.C. § 102(b).

The Platt reference also has a filing date of May 30, 2002. FF 2. This filing date (May 30, 2002), however, occurs after the present application's filing date (January 26, 2001). *See* FF 1-2. Additionally, the present application does not claim priority to a non-provisional or provisional application. FF 3. Platt's earliest filing date is thus May 30, 2002. The Platt reference therefore also does not evidence: (1) the invention was published in this or a foreign country before the invention by Appellants under § 102(a), or (2) a patent by another filed in the United States before Appellants' invention under § 102(e).

For the foregoing reasons, the Platt reference does not qualify as prior art under § 102. Because the Examiner relies on Platt in formulating the

obviousness rejection of all appealed claims (*see* Ans. 3-4), the Examiner's obviousness rejection of all pending claims based on Raley[3] and Platt is erroneous. We therefore will not sustain the rejection of claims 27, 29-46, and 48-52.

CONCLUSION

The Examiner erred in rejecting claims 27, 29-46, and 48-52 under § 103 based on Raley and Platt.

DECISION

The Examiner's decision rejecting claims 27, 29-46, and 48-52 is reversed.

REVERSED

msc

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[3] Since this issue is dispositive of our reversal of the Examiner's rejection, we need not address the merits of the Examiner's rejection. Nevertheless, we note in passing that Raley discloses a "client" and a "server" can be a "thin client." Raley, col. 9, ll. 60-64.